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International Court of Justice

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-- B --

THE ACQUIRING OF TOTALITARIAN CONTROL OVER GERMANY: POLITICAL

FIRST STEPS

CONTROL ACQUIRED

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II. THE ACQUIRING OF TOTALITARIAN CONTROL OF GERMANY: POLITICAL.

A. First Steps in Acquisition of Control of State Machinery.

1. The Nazi conspirators first sought control of State Machinery by force. The Munich Putsch of 1923, aimed at the overthrow of the Weimar Republic by direct action failed.

On 8 November 1923 occurred the so-called Munich Putsch. During the evening, von Kahr, State Commissioner General of Bavaria, was speaking at the Bürgerbräukeller in Munich. Hitler and other Nazi leaders appeared, supported by the Sturmabteilungen (Storm Troops) and other fighting groups. Hitler fired a shot and announced that a Nationalist Revolution setting up a dictatorship had taken place. There followed a conference after which von Kahr, von Lossow, and Colonel of Police von Seisser, announced they would cooperate with Hitler and that a "Provisional National Government" was established as follows:

Reich Chancellor	Adolf Hitler
Leader of the National Army	Gen. von Ludendorff
Reich Minister of War	von Lossow
Reich Minister of Police	von Seisser
Reich Finance Minister	Feder

It was also announced Kahr would be State Administrator for Bavaria, Pöhner would be Bavarian Prime Minister and the defendant Frick Munich Police President. Kahr, Lossow and Seisser then departed. During the night the latter group alerted the police, brought troops to Munich and announced that their consent to the Putsch had been obtained by force. The afternoon of the next day, Hitler, Ludendorff and their supporters attempted to march into the center of Munich. At the Felderrnhalle the procession met a patrol of police, shots were exchanged, and men on both sides were killed. The defendant, Hermann Goering was wounded, the Putsch was broken up, the Party and its organization were declared illegal and its leaders, including Hitler and the defendants Frick and Streicher were arrested. The defendant

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Rosenberg, together with Amann and Drexler, tried to keep the Party together after if had been forbidden. Hitler and others later were tried for high treason. At the trial Hitler admitted his participation in the foregoing attempt to seize control of the State by force. He was convicted and sentenced to imprisonment.

2532-PS. Rühle, Das Dritte Reich (The Third Reich) 1918-1933, Berlin 1936, pp. 103-106.

2404-PS. Der Hitler Prozess (The Hitler Trial).(1934) Report of Hitler's speech in his own defense.

2. The Nazi Conspirators then set out through the Nazi Party to undermine and capture the German Government by "legal" forms supported by terrorism.

a. In 1925, the conspirators reorganized the Nazi Party and began a campaign to secure support from German voters throughout the nation.

On 26 February 1925, the Völkischer Beobachter, the official newspaper of the National Socialist German Worker's Party (NSDAP) appeared for the first time after the Munich Putsch, and on the following day Hitler made his first speech after his release from prison. He then began to rebuild the Party organization. The conspirators, through the Nazi Party, participated in election campaigns and other political activity throughout Germany and secured the election of members of the Reichstag.

2532-PS. Rühle, Das Dritte Reich (The Third Reich) pp. 126, 127

As an indication of this activity in May 1928, the Nazi Party received 2.6% of the total vote and obtained 12 out of 491 seats in the Reichstag. In September 1930, the Nazi Party polled 18.3% of the total vote and won 107 out of 577 seats in the Reichstag. In July 1932, it received 37.3% of the total vote cast and won 230 out of 608 seats. In November 1932, it polled 33.1% of the vote and won 196 out of 584 seats in the Reichstag.

2514-PS. Statistisches Jahrbuch für Das Deutsche Reich (Statistical Yearbook for the German Reich) 1933, p. 539.

b. The Nazi conspirators asserted they sought power only by legal forms.

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In November 1934, Hitler, speaking of the Munich Putsch of 1923 said:

> "It gave me the opportunity to lay down the new tactics of the Party and to pledge it to legality".
>
> 2741-PS, Völkischer Beobachter, 10 November 1934.

In September 1931, three officers of the Reichswehr were tried at Leipzig for high treason. Hitler was invited to testify at this trial at the request of the defendant Frank to give evidence that the NSDAP was striving to attain its goal by purely legal means. He was asked: "How do you imagine the setting up of a Third Reich?" His reply was, "This term only describes the basis of the struggle but not the objective. We will enter the legal organizations and will make our Party a decisive factor in this way. But when we do possess constitutional rights then we will form the State in the manner which we consider to be the right one." The President then asked: "This too by constitutional means?" Hitler replied: "Yes."

> 2512-PS, Frankfurter Zeitung, 26 February 1931, pp. 1, 2.

c. The purpose of the Nazi conspirators in participating in elections and in the Reichstag was in fact to undermine the parliamentary system of the Republic and to replace it with a dictatorship of their own.

This the Nazi conspirators themselves make clear. The defendant Frick wrote in 1927:

> "There is no National Socialist and no racialist who expects any kind of manly German deed from that gossip club on the Koenigsplatz and who is not convinced of the necessity for direct action by the unbroken will of the German people to bring about their spiritual and physical liberation. But there is a long road ahead. After the failure of November, 1923, there was no choice but to begin all over again and to strive to bring about a change in the spirit and determination of the most valuable of our racial comrades, as the indispensible prerequisite for the success of the coming fight for freedom. Our activities in parliament must be evaluated as merely part of this propaganda work."
>
> "Our participation in the parliament does not indicate a support, but rather an undermining of the parliamentarian system. It does not indicate that we renounce our anti-parliamentarian attitude, but that

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> we are fighting the enemy with his own weapons and that we are fighting for our National Socialist goal from the parliamentary platform."
>
> 2742-PS, Nationalsozialistisches Jahrbuch (National Socialist Yearbook) 1927, p. 124

On 30 April 1928, the Nazi conspirator Goebbels wrote in his paper "Der Angriff":

> "We enter parliament in order to supply ourselves, in the arsenal of democracy, with its own weapons. We become members of the Reichstag in order to paralyze the Weimar sentiment with its own assistance. If democracy is so stupid as to give us free tickets and per diem for this "blockade" (Barendienst), that is its own affair."

And later in the same article he continued:

> "We do not come as friends, nor even as neutrals. We come as enemies: As the wolf bursts into the flock, so we come."
>
> 2500-PS, Goebbels, Der Angriff: Aufsatze aus der Kampfzeit (Way up from the Time of Struggle) p. 71.

In a pamphlet published in 1935, the Nazi conspirator Goebbels said:

> "When democracy granted democratic methods for us in the times of opposition, this was bound to happen in a democratic system. However, we National Socialists never asserted that we represented a democratic point of view, but we have declared openly that we used democratic methods only in order to gain the power and that, after assuming the power, we would deny to our adversaries without any consideration the means which were granted to us in the times of opposition.
>
> 2412-PS. Goebbels, Wesen und Gestalt Nationalsozialismus (Nature and Form of National Socialism) Berlin (1935) pp. 12, 13.

A leading Nazi writer on Constitutional Law, Ernst Rudolf Huber, later wrote of this period:

> "The parliamentary battle of the NSDAP had the single purpose of destroying the parliamentary system from within through its own methods. It was necessary above all to make formal use of the possibilities of the party-state system but to refuse real cooperation and thereby to render the parliamentary system, which is by nature dependent upon the responsible cooperation of the opposition, incapable of action."

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2633-PS, Huber, Verfassungsrecht des Grossdeutschen Reiches (Constitutional Law of the Greater German Reich) 1939, p. 31.

The Nazi members of the Reichstag conducted themselves as a storm troop unit. Whenever representatives of the government or the democratic parties spoke, the Nazi members marched out in a body in studied contempt of the speaker, or entered in a body to interrupt the speaker, thus making it physically impossible for the Reichstag President to maintain order. In the case of speakers of opposition parties, the Nazi members constantly interrupted, often resorting to lengthy and spurious parliamentary maneuvers, with the result that the schedule of the session was thrown out of gear. The tactics of disturbances of parliamentary proceedings employed by the Nazis finally culminated in physical attacks upon members of the house as well as upon visitors.

L-83, Affidavit Gerhart H. Seger, 21 July 1945, p. 7

In a letter of 24 August 1931 to the defendant Rosenberg, Hitler deplores an article in "Völkischer Beobachter" the effect of which is to prevent undermining of support for the then existing form of government and says: "I myself am travelling all over Germany to achieve exactly the opposite."

047-PS, Original letter 24 August 1931 to Rosenberg signed by Hitler.

d. The Nazi conspirators supported their "legal" activities by terrorism.

(1) The Nazi conspirators created and utilized as a Party formation the Strumabteilungen (S.A.) a semi-military voluntary organization of young men trained for and committed to the use of violence, whose mission was to make the Party the master of the streets.

The S.A. was organized in 1921. As indicated by its name, it was a voluntary organization of young men trained for and committed to the use of violence. To quote from a pamphlet compiled on order of the Supreme S.A. Headquarters:

> "The S.A. was not founded as one forms just any sort of club. It was born in midst of strife and received

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> from the Fuehrer himself the name "Storm Troops" after that memorable hall battle in Hofbräuhaus at Munich on the 4th of November 1921. . . Blood and sacrifice were the most faithful companions of the young S.A. on its hard path to power. The Storm Troops were and still are today the fist and propaganda arm of the movement".
>
> 2168-PS, Bayer, Die SA, (1938,) p. 8.

It was organized along semi-military lines from the beginning. To quote from Bayer:

> "It is one of the greatest historical services of the SA that at the time when the German People's Army had to undergo a dissolution, it held high those virtues which marked the German soldier: personal courage, idealism, willingness to sacrifice, consciousness of responsibility, power to decide, and leadership. Thus, the SA became among the people the messenger and bearer of German armed strength and German armed spirit.
>
> The 4th of November 1921 was not only the birth hour of the SA by itself, but was the day from which the young fighting troop of the Movement took its stand at the focal point of political events. With the clear recognition that now the unity (Geschlossenheit) of a troop led to victory, the SA was systematically reorganized and so-called "Centuries" (Hundertschaften) were established. . ."
>
> 2168-PS, Bayer, Die SA, p. 9.

In March 1923, the defendant Goering took command of the entire SA. In November 1923, the SA were used in the Munich Putsch. When the Party was reorganized in 1925, the SA continued to be the fighting organization of the Party. Again to quote from Bayer:

> "And now a fight for Germany began of such a sort as was never before fought. What are names, what are words or figures which are not indeed able to express the magnitude of belief and of idealism on one side and the magnitude of hate on the other side.
>
> 1925: the Party lives again, and its iron spearhead is the SA. With it the power and meaning of the National Socialist movement grows. Around the central events of the whole Movement, the Reich Party Days, dates, decisions, fights and victory roll themselves into a long list of German men of undenying willingness to sacrifice."
>
> 2168, Bayer, Die SA, p. 10.

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Mastery of the streets was at all times the mission of the SA. While discussing his ideas as to the part which this organization should play in the political activity of his Party, Hitler states:

> "What we needed and still need were and are not a hundred or two hundred reckless conspirators, but a hundred thousand and a second hundred thousand fighters for our philosophy of life. We should not work in secret conventicles, but in mighty mass demonstrations, and it is not by dagger and poison or pistol that the road can be cleared for the movement but by the conquest of the streets. We must teach the Marxists that the future master of the streets is National Socialism, just as it will some day be the master of the state".
>
> 404-PS, Hitler, Mein Kampf (41st ed. 1933) p 607.

To quote again from Bayer:

> "Possession of the streets is the key to power in the state--for this reason the SA marched and fought. The public would have never received knowledge from the agitative speeches of the little Reichstag faction and its propaganda or from the desires and aims of the Party, if the martial tread and battle song of the SA companies had not beat the measure for the truth of a relentless criticism of the state of affairs in the governmental system . . . . .
>
> The SA conquered for itself a place in public opinion and the leadership of the National Socialist Movement dictated to its opponents the law for quarrels. The SA was already a state within a state; a part of the future in a sad present."
>
> 2168-PS, Bayer, Die SA. (1938) p. 11.
>
> For further evidence of the activities of the SA, see proof to be introduced in support of that section of Appendix B of the Indictment which deals with the SA.

(2) The Nazi conspirators constantly used physical violence and terror to break up meetings of political opponents, and to suppress opposition of debate in their own meetings.

Indicative of the methods constantly used by the Nazi conspirators during this period, are the following: On numerous occasions meetings of the Deutsche Friedensgesellschaft (Peace Society) were broken up and terrorized by shock troops and SA units. Groups of National Socialists invaded meetings of the society, interrupted the

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speaker, attempted to attack him and endeavored to make sufficient disturbance so that the meetings would have to be cancelled.

L-83, Affidavit Gerhart H. Seger, 21 July 1945 p. 4.

To quote again from Bayer:

> ". . .As an example of a seemingly impossible deed, the 11th of February 1927 should be firmly preserved. It is the day on which the SA broke the Red Terror, with heavy sacrifice, in the hall battle at the Pharoah's Hall (Pharussaelen) in Berlin, the stronghold of the Communists, and thereby established itself decisively in the capitol city of the Reich. In considering the badly wounded SA men, Dr. Goebbels coined the phrase "unknown SA Man", who silently fights and bleeds, obeying only his duty."

2168-PS, Bayer, Die SA (1938) p. 11.

In Berlin, under the leadership of the Nazi conspirator Goebbels, so-called "Rollkommandos" were organized for the purpose of disrupting political meetings of all non-Nazi groups. Such "Rollkommandos" were charged with interrupting, making noise and trying to make the speaker nervous. Finally the Nazis broke up meetings by "Rollkommando" raids. In many cases, fights resulted, during which the furniture of the particular hall was destroyed, and a number of persons were hurt. Nazis were armed with blackjacks, brass knuckles, rubber truncheons, walking sticks and beer bottles. After the Reichstag election of 1930, Nazi terrorism became more overt, and from then on scarcely a day went by when the Chief of the Security Police in Berlin did not receive a minimum of five to ten reports, often more, of riots instigated by Nazis.

2955-PS, Affidavit of Magnus Heimannsberg, (Chief of the Security Police in Berlin from 1927 until 1932), 14 November 1945.

During the campaign for the Reichstag election of 14 September 1930, Nazi conspirators made it a practice to send speakers accompanied by many storm troopers to meetings of other political parties, often physically taking over the meeting. On one such

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occasion a large detachment of storm troopers, some of whom were armed with pistols and clubs, attended a meeting called by the Social Democratic Party, succeeded in forcibly excluding everybody not in sympathy with their views and concluded the meeting as their own. Such violent tactics, repeated many times, were an integral part of the political creed of the Nazis.

L-83, Affidavit Gerhart H. Seger, 21 July 1945, p. 6.

Ultimately, in Berlin, just before the Nazis seized power, it was necessary to put the entire Police Force on the job of fighting the Nazis, a condition which left little time for other Police duties.

2955-PS, Affidavit of Magnus Heimannsberg, 14 November 1945.

(3) The Nazi conspirators constantly threatened their opponents with organized reprisals and terror.

During the course of the trial of three officers of the Reichswehr in Leipzig for high treason in September 1931, Hitler said:

> "But I may assure you that if the Nazi movement's struggle is successful, then there will be a Nazi Court of Law too, the November 1918 revolution will be atoned, and there'll be some heads chopped off."

2512-PS, Frankfurter Zeitung, 26 September 1931, p. 1, 2.

The defendant Frick wrote in the National Socialist Yearbook for 1930:

> "No wonder that as the situation of the entire German people, as well as that of the individual racial comrade, grows rapidly worse, increased numbers are realizing the incompetence of the parliamentarian system, and no wonder that even some who are responsible for the present system desperately cry for a dictatorship. This however, will not save them from their fate of one day being called to account before a German State Tribunal."

2743-PS, Nationalsozialistisches Jahrbuch (National Socialist Yearbook) 1930. p. 178.

On 7 October 1929, the National Socialist District leader Terboven said in a meeting in Essen:

> "This weakness is especially known to Severing, who symbolizes the present State, and he intends

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> to render a service to the State, which is breathing its last; but this too will no longer save the present corrupt parliamentarian system. . . But I give such a dictatorship only four weeks. Then the people will awaken, then the National Socialists will come to power, and then there will not be enough lamp posts in Germany. . ."
>
> "The National Socialists will march into the new Reichstag with thirty members; then there will be black eyes every day in this Reichstag; thus this corrupt parliamentarian system will be further discredited; disorder and chaos will set in, and then the National Socialists will judge the moment to have arrived in which they are to seize the political power."
>
> 2513-PS, Confidential Report Police Division Prussian Ministry of Interior. 1930.

On 18 October 1929, the defendant Frick, while discussing the Young Plan in a meeting in Pyritz said:

> "This fateful struggle will first be taken up with the ballot, but this cannot continue indefinitely, for history has taught us that in a battle, blood must be shed, and iron broken. The ballot is the beginning of this fateful struggle. We are determined to promulgate by force that which we preach. Just as Mussolini exterminated the Marxists in Italy, so must we also succeed in accomplishing the same through dictatorship and terror."
>
> 2513-PS, Confidential Report Police Division Prussian Ministry of Interior. 1930.

In December 1932, the defendant Frick, at that time Chairman of the Foreign Affairs Committee of the Reichstag stated to a fellow member of that committee:

> "Don't worry, when we are in power we shall put all of you guys into concentration camps."
>
> L-83, Affidavit Gerhart H. Seger, 21 July 1945, p. 9.

(4) The Nazi conspirators openly approved acts of terrorism committed by their subordinates.

On 22 August 1932, five National Socialists were condemned to death for a murder in the town of Potempa. Hitler wired to the condemned men:

> "My Comrades! Faced with this terrible blood sentence, I feel myself bound to you in unlimited faithfulness. Your liberty is from this moment a

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question of our honor. To fight against a Government under which such a thing could happen is our duty".

2532-PS, Rühle, Das Dritte Reich; Die Kampfjahre, 1918-1933 (The Third Reich; the Years of Struggle 1918-1933) Berlin 1936. p. 227.

2511-PS, Völkischer Beobachter, Reichausgabe, 24 Aug. 1932, page 1, Col. 1.

Goering, two days later sent the following telegram to the condemned men:

"In nameless embitterment and rage against the terror sentence which has struck you, I promise you, My Comrades, that our whole fight from now on will be for your freedom. You are no murderers. You have defended the life and the honor of your Comrades. I send to your families today 1,000 Marks which I have received from your friends. Be courageous. More than 14,000,000 of the best Germans have made your interest their own".

2634-PS, Völkischer Beobachter, 26 August 1932, p. 2, Col. 1.

On 2 September 1932, the death sentences were commuted to imprisonment for life. In 1933, after the Nazis came into power, the five were set free.

2532-PS, Rühle, Das Dritte Reich; Die Kampfjahre, 1918-1933 (The Third Reich; the Years of Struggle 1918-1933) Berlin (1936) p. 227.

Soon after coming to power the Nazi conspirators took steps to grant a general amnesty for all unlawful acts, including acts of violence, committed by their adherents in course of their struggle for power. On 21 March 1933, a decree was promulgated, signed by von Hindenberg, Hitler and by the defendants Frick and von Papen granting amnesty "For penal acts committed in the national revolution of the German People, in its preparation or in the fight for the German soil".

2059-PS, Verordnung des Reichspräsidenten über die Gewährung von Straffreiheit (Decree of the Reich President Granting Amnesty) 21 March 1933, 1933 Reichsgesetzblatt, Part I, p. 134.

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B. Control Acquired

1. On 30 January 1933, Hitler became Chancellor of the German Republic.

2. After the Reichstag fire of 28 February 1933, clauses of the Weimar Constitution guaranteeing personal liberty, freedom of speech, of the press, of association and assembly, were suspended.

The Weimar Constitution contained certain guarantees as to personal freedom (Article 114), as to inviolability of the home (Article 115), and as to the secrecy of letters and other communications (Article 117). It also had provisions dealing with freedom of speech and of the press (Article 118) and of assembly (Article 123) and of association (Article 124). The Reich President may "if public safety and order in the German Reich are considerably disturbed or endangered" take steps to suspend "the Fundamental Rights" established in Articles 114, 115, 117, 118, 123, 124 and 153. (Article 48 (2)).

2050-PS, Die Verfassung des Deutschen Reichs (The Constitution of the German Reich) of 11 August 1919, 1919 Reichsgesetzblatt, Part I, p. 1383.

On 28 February 1933, the Nazi conspirators, taking as their excuse a fire which had just destroyed the Reichstag building, caused to be promulgated a Decree of the Reich President, suspending constitutional guarantees of freedom. This decree, which purported to be an exercise of the powers of the Reich President under Article 48 (2) of the Constitution, and which was signed by the Reich President, Hindenberg, the Reich Chancellor, Hitler, the Reich Minister of the Interior, the defendant Frick and the Reich Minister of Justice, Guertner, provided in part:

> "Sections 114, 115, 117, 118, 123, 124, and 153 of the Constitution of the German Reich are suspended until further notice. Thus, restrictions on personal liberty, on the right of free expression of opinion, including freedom of the press, on the right of assembly and the right of association, and violations of the privacy of postal, telegraphic, and telephonic communications, and warrants for house-searches, orders for confiscations as well as restrictions on property, are also permissible beyond the legal limits otherwise prescribed".

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1390-PS, Verordnung des Reichspräsidenten zum Schutz von Volk und Staat (Decree of the Reich President for the Protection of the People and State), 28 February 1933. 1933 Reichsgesetzblatt, Part I, p. 83.

3. The Nazi conspirators secured the passage by the Reichstag of a "Law for the Protection of the People and the Reich", giving Hitler and the members of his then Cabinet plenary powers of legislation.

At the first meeting of Hitler's Cabinet on 30 January 1933, passage of an Enabling Law (Ermächtigungsgesetz) was discussed, and suppression of the Communist Party was considered as a means for securing the majority requisite for this and other purposes.

351-PS, Minutes of First Meeting of Cabinet of Hitler, 30 January 1933.

Since such a law involved a change in the Constitution, it was governed by Article 76 of the Weimar Constitution which provided: "The Constitution may be amended by law. The acts of the Reichstag amending the Constitution can only take effect if two-thirds of the regular number of members are present and at least two-thirds of those present consent."

2050-PS, Die Verfassung des Deutschen Reichs (The Constitution of the German Reich) of 11 August 1919, 1919 Reichsgesetzblatt, Part I, p. 1383.

At the first meeting of the Hitler Cabinet on 30 January 1933, both Hitler and the defendant Goering favored early dissolution of the Reichstag and new elections in an effort to achieve a majority for the new Cabinet.

351-PS, Minutes of First Meeting of Cabinet of Hitler, 30 January 1933.

This course was followed and new elections for the Reichstag were held 5 March 1933, at which 288 Nazis were elected out of 647 members.

2514-PS, Statistisches Jahrbuch für das Deutsche Reich (Statistical Yearbook for the German Reich) 1933, p. 539.

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Taking advantage of the Presidential decree of 28 February 1933, suspending constitutional guarantees of freedom, the defendant Goering and other Nazi conspirators immediately caused a large number of Communists, including party officials and Reichstag deputies, and a smaller number of Social Democratic officials and deputies to be placed in "protective custody".

2324-PS, Goering, Aufbau Einer Nation (Rise of a Nation) p. 92.

2573-PS, Frankfurter Zeitung, 1 March 1933 (Announcement of Official Prussian Press Office).

L-83, Affidavit Gerhart H. Seger. 21 July 1945, p. 9.

Thus all Communist deputies and a number of Social Democratic deputies were prevented from attending the new session of the Reichstag. On 9 March 1933, the defendant Frick announced that the Communists would be prevented from participating in the first session of the Reichstag on March 21st, because of their being more usefully occupied.

2403-PS, Dokumente der Deutschen Politik (Documents of German Politics) Vol. I, page 55.

As cynically stated by the defendant Frick:

> "When the Reichstag meets the 21st of March, the Communists will be prevented by urgent labor elsewhere from participating in the session. In concentration camps they will be re-educated for productive work. We will know how to render harmless permanently sub-humans who do not want to be re-educated".

2651-PS, Völkischer Beobachter, 14 March 1933.

At a meeting of the Reich Cabinet on 15 March 1933, the problem of securing the necessary two thirds majority in favor of an Enabling Act was again considered. The defendant Frick stated he believed the Act would have to be broadly conceived, in a manner to allow for any deviation from the clauses of the Constitution of the Reich. The defendant Goering said he thought the two-thirds majority would be forthcoming and that if necessary some of the Social Democrats could be excluded

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from the room during the voting.

2962-PS, Minutes of Meeting of Reich Cabinet, 15 March 1933.

At a meeting of the Cabinet on 20 March 1933, there was further discussion of means for securing the majority and quorum necessary to secure passage of the Act.

2963-PS, Minutes of Meeting of Reich Cabinet, 20 March 1933.

On 23 March, Hitler spoke in favor of an Enabling Law proposed by the Nazi conspirators and in the course of the debate said:

> "The Government insists on the passage of this law. It expects a clear decision in any case. It offers to all the Parties in the Reichstag the possibility of a peaceful development and a possible conciliation in the future. But it is also determined to consider a disapproval of this law as a declaration of resistance. It is up to you, gentlemen, to make the decision now. It will be either peace or war."

2652-PS, Völkischer Beobachter, 24 March 1933, p. 2

Thus subject to the full weight of Nazi pressure and terror, the Reichstag passed the proposed law, 441 deputies voting in its favor, and 94 Social Democrats being opposed.

2579-PS, The Frankfurter Zeitung, 24 March 1933, p. 1.

The following day, the law was promulgated. It provided:

> "The Reichstag has resolved the following law, which is, with the approval of the Reichsrat, herewith promulgated, after it has been established that the requirements have been satisfied for legislation altering the Constitution.
>
> SECTION 1. Reich laws can be enacted by the Reich Cabinet as well as in accordance with the Procedure established in the Constitution. This applies also to the laws referred to in article 85, paragraph 2, and in article 87 of the Constitution.
>
> SECTION 2. The national laws enacted by the Reich Cabinet may deviate from the Constitution so far as they do not affect the position of the Reichstag and the Reichsrat. The powers of the President remain undisturbed.
>
> SECTION 3. The national laws enacted by the Reich Cabinet are prepared by the Chancellor and published in the Reichsgesetzblatt. They come into

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effect, unless otherwise specified, upon the day following their publication. Articles 68 to 77 of the Constitution do not apply to the laws enacted by the Reich Cabinet.

SECTION 4. Treaties of the Reich with foreign states which concern matters of national legislation do not require the consent of the bodies participating in legislation. The Reich Cabinet is empowered to issue the necessary provisions for the execution of these treaties.

SECTION 5. This law becomes effective on the day of its publication. It becomes invalid on April 1, 1937; it further becomes invalid when the present Reich Cabinet is replaced by another."

2001-PS, Gesetz zur Behebung der Not von Volk und Reich (Law to Remove the Distress of People and State) 24 March 1933, 1933 Reichsgesetzblatt, Part I, p. 141.

The time limit in the law was twice extended by action of the Reichstag and once by decree of Hitler.

2047-PS, Gesetz zur Verlängerung des Gesetzes zur Behebung der Not von Volk und Reich (Law for the Extension of the Law to Remove the Distress of People and State) 30 January 1937, 1937 Reichsgesetzblatt, Part I, p. 105.

2048-PS, Gesetz zur Verlängerung des Gesetzes zur Behebung der Not von Volk und Reich (Law for the Extension of the Law to Remove the Distress of People and State) 30 January 1939, 1939 Reichsgesetzblatt, Part I, p. 95.

2103-PS, Erlass des Führers über die Regierungsgesetzgebung (Decree of the Fuehrer on Cabinet Legislation) 10 May 1943, 1943 Reichsgesetzblatt, Part I, p. 295.

On 29 June 1933, Dr. Hugenberg resigned as Reich Minister of Economy and as Reich Minister for Food and Agriculture.

351-PS, Minutes of First Meeting of Cabinet of Hitler, 30 January 1933 (A chart showing the composition of the Cabinet on 30 January 1933 and for some time thereafter is a part of this document).

Thereafter, other members of the Cabinet resigned from time to time, and in a similar way new members were added. The Reich Cabinet continued to exercise the plenary powers conferred on it by the law of 24 March 1933 numerous times.

Consult the proof in support of that Section of Appendix B of the indictment dealing with the Reich Cabinet.

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4. The Nazi conspirators caused all political parties, except the Nazi Party, to be prohibited.

After the Reichstag fire of 27 February 1933, the organization of the Communist Party was destroyed. On 9 March 1933, the Reich Minister of the Interior, the defendant Frick, announced that at the opening of the Reichstag on 21 March 1933, the Communists would be prevented from taking part in this parliamentary meeting because of their seditious activity. On 26 May 1933, a law was promulgated, signed by Hitler and the defendant Frick, providing for the confiscation of Communist property.

2403-PS, Dokumente der Deutschen Politik (Documents of German Politics) Vol. I, p. 55.

1396-PS, Gesetz über die Einziehung Kommunistischen Vermögens (Law Concerning the Confiscation of Communist Property) 26 May 1933, 1933 Reichsgesetzblatt, Part I, p. 293.

Numerous restraints were imposed on the Social Democratic Party after suspension of the Constitutional guarantees of freedom on 28 February 1933, including the arrest of a number of its leaders and Reichstag deputies. The backbone of the Party was broken by the occupation of the buildings of the trade unions and the smashing of free trade unions in May 1933. On 22 June 1933, the Social Democratic Party was suppressed in Prussia.

2403-PS, Dokumente der Deutschen Politik (Documents of German Politics) Vol. I, p. 55.

On 7 July 1933 a Reich decree eliminated Social Democrats from the Reichstag and from the governing bodies of Provinces and Municipalities.

2058-PS, Verordnung zur Sicherung der Staatsführung (Ordinance to insure State leadership) 7 July 1933, 1933 Reichsgesetzblatt, Part I, p. 462.

On 14 July 1933, provisions of the Law of 26 May 1933 confiscating Communist property were made applicable to assets and interests of the Social Democratic Party and its affiliated organizations "and also to assets and interests which are used or destined to promote Marxist or other activities found by the Reich Minister of the Interior to be subversive to people and state."

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1388-PS, Gesetz uber die Einziehung volks-und Staatsfeindlichen Vermogens (Law Confiscating Property Subversive to People and State) 14 July 1933. 1933 Reichsgesetzblatt, Part I, p. 479.

Faced with similar pressure, the other German Parties either dissolved or combined with the Nazis.

2403-PS, Dokumente der Deutschen Politik (Documents of German Politics) Vol. I, p. 55.

The Nazi conspirators then promulgated a law declaring the Nazi Party to be the only political party in Germany and making it criminal to maintain any other political party or to form a new political party. This law, which was signed by Hitler, the defendant Frick and Guertner, provided in part:

"Art. 1
The National Socialist German Worker's Party (Nationalsozialistische Deutsche Arbeiterpartei) constitutes the only political party in Germany.

Art. 2
Whoever undertakes to maintain the organizational structure of another political party or to form a new political party will be punished with penal servitude up to three years or with imprisonment of from six months to three years, if the deed is not subject to a greater penalty according to other regulations."

1388-PS, Gesetz Gegen die Neubildung von Parteien (Law Against the Establishment of Parties) 14 July 1933, 1933 Reichsgesetzblatt, Part I, p. 479.

In a speech on 6 July 1933, Hitler stated:

"The political parties have finally been abolished. This is a historical occurrence, the meaning and implication of which one cannot yet be fully conscious of. Now, we must set aside the last vestige of democracy, particularly the methods of voting and making majority decisions which today are used in local governments, in economic organizations and in labor boards; in its place we must validate the responsibility of the individual. The achievement of external power must be followed by the inner-education of the people. . .".

Later in the same speech, Hitler said:

"The Party has become the State. All power lies with the Reich Authorities".

2632-PS, Die Nationalsozialistische Revolution 1933 (The National Socialist Revolution 1933), Berlin, 1935, p. 53.

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5. <u>The Nazi conspirators caused the Nazi Party to be established as a para-governmental organization with extensive and extraordinary privileges.</u>

On 1 December 1933, the Reich Cabinet promulgated a law for the "Securing the Unity of Party and State". It was signed by Hitler and the defendant Frick. The law provided:

"Art 1
1) After the victory of the National Socialistic Revolution, the National Socialistic German Labor Party is the bearer of the concept of the German State and is inseperably the state.
2) It will be a part of the public law. Its organization will be determined by the Fuehrer.

Art. 2
The deputy of the Fuehrer and the Chief of Staff of the SA will become members of the Reichs government in order to insure close cooperation of the offices of the party and SA with the public authorities.

Art. 3
The members of the National Socialistic German Labor Party and the SA (including their subordinate organizations as the leading and driving force of the National Socialist State will bear greater responsibility toward Fuehrer, people and state.
2) In case they violate these duties, they will be subject to special jurisdiction by party and state.
3) The Fuehrer may extend these regulations in order to include members of other organizations.

Art. 4
Every action or neglect on the part of members of the SA (including their subordinate organizations) attacking or endangering the existence, organization, activity or reputation of the National Socialistic German Labor Party, in particular any infraction against discipline and order, will be regarded as a violation of duty.

Art. 5
Custody and arrest may be inflicted in addition to the usual penalties.

Art. 6
The public authorities have to grant legal and administrative assistance to the offices of the Party and the SA which are entrusted with the execution of the jurisdiction of the Party and SA.

Art. 7
The law regarding the authority to inflict penalties on members of the SA and SS, of the 28 April 1933 (RGBl, p. 230) will be invalidated.

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Art. 8
The Reichs Chancellor, as Fuehrer of the National Socialistic German Labor Party and as the supreme commander of SA will issue the regulation necessary for the execution and augmentation of this law, particularly with respect to the organization and procedure of the jurisdiction of the Party and SA. He will determine the time at which the regulations concerning this jurisdiction will be effective."

1395-PS, Gesetz zur Sicherung der Einheit von Partei und Staat. (Law to insure the Unity of Party and State.) 1 December 1933, 1933 Reichsgesetzblatt, Part I, p. 1016.

Thus the Nazi Party became a para-governmental organization in Germany.

See proof offered in support of Paragraph IV (D) 3. (a) of the Indictment for further evidence of the growth of the dual features of Party and State.

The Nazi conspirators granted the Nazi Party and its components extensive and extraordinary privileges. On 19 May 1933, they passed a law to protect and insure respect for Party symbols.

2759-PS, Gesetz zum Schutze der Nationalen Symbole (Law for the Protection of Nationalist Symbols) 19 May 1933, 1933 Reichsgesetzblatt, Part I, p. 285.

On 20 December 1934, the Nazi conspirators caused a law to be promulgated, signed by Hitler, Guertner, and the defendants Hess and Frick, making it a crime to make false or grevious statements to injure the prestige of the Government of the Reich, the NSDAP, or its agencies. This law also declared it to be a crime to wear the uniform or the insignia of the NSDAP without authority to do so, and controlled the manufacture and sale of Party uniforms, flags and insignia.

1393-PS, Gesetz gegen heimtuckische Angriffe auf Staat und Partei und zum Schutz der Parteiuniformen. (Law against Treacherous Attacks on State and Party and for the Protection of Party Uniforms) 20 December 1934, 1934 Reichsgesetzblatt, Part I, p. 1269.

A decree of 29 March 1935 defining the legal status of the NSDAP and its components and affiliated organizations is a

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further indication of the extraordinary privileges enjoyed by the Nazi Party.

1725-PS, Verordnung zur Durchführung des Gesetzes zur Sicherung der Einheit von Partei und Staat (Decree enforcing the Law for Securing the Unity of Party and State) 29 March 1935, 1935 Reichsgesetzblatt, Part I, p. 502.

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